UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN WILSON, on behalf of himself and all others similarly situated,
 	
    Plaintiff,
 	
v.
 	
ANCESTRY.COM OPERATIONS INC., a Virginia Corporation; ANCESTRY.COM INC., a Delaware Corporation; and ANCESTRY.COM LLC, a Delaware limited liability company,
 	
    Defendants.
	Case No.: 2:22-cv-00861 EAS (KAJ)
	
	Judge: Hon. Edmund A. Sargus
	
	Magistrate Judge Kimberly A. Jolson

DECLARATION OF TODD GODFREY IN SUPPORT OF ANCESTRY'S MOTION FOR SUMMARY JUDGMENT

Pursuant to 28 U.S.C. § 1746, I, Todd Godfrey, declare as follows:

1.   I am Vice President of Global Content for Ancestry.com Operations Inc., a wholly-owned subsidiary of Ancestry.com Inc. Ancestry.com Inc. is the parent of Ancestry.com Operations Inc. In this declaration, I collectively refer to these entities as "Ancestry" and distinguish among them only if necessary to ensure accuracy and clarity. I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2.   Since 2008, I have been employed by Ancestry, a genealogy company that owns and operates the public website Ancestry.com. As part of my job responsibilities, I am familiar with Ancestry's operations and record keeping, and I have reviewed Ancestry's business records and other documents that provide the basis for my statements. Through this review and based on
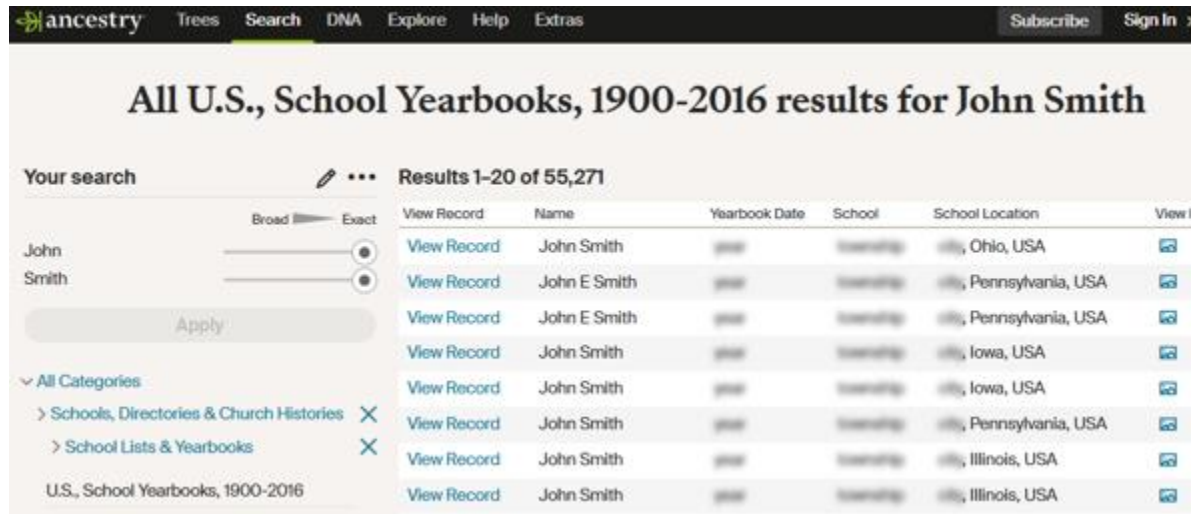
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my personal knowledge, which I obtained through my employment, training, and expertise at Ancestry, I have personal knowledge of the facts stated in this declaration.

3.　　Ancestry.com contains various historical records, including digitized yearbook records, which can be used to allow users to discover their family histories. Many of the yearbook records in Ancestry's Yearbook Database have never been viewed. Some, but not all, of the digital yearbook records in Ancestry's Yearbook Database are searchable on Ancestry.com. Not every record in each of the Ohio yearbooks on Ancestry's website is searchable. Many of the searchable yearbook records on Ancestry's site do not contain photographs. For the records that are searchable, Ancestry.com users can enter certain search terms (name, location) to search Ancestry's Yearbook Database. Ancestry responds to a search query by doing one of the following: (1) presenting a list of search results that might match the user's query, (2) not displaying any search results and instead indicating that the search is too broad, or (3) indicating there are no good matches for the user's query.

4.　　Ancestry does not keep search results in any static form. Instead, search results are generated only in response to a user's search, and results will thus vary depending on the search criteria used and when the search is conducted (due to continued updates to the search algorithms and content of the database). A search result list returned to a non-subscriber contains (1) the name the user searched (or similar names, depending on the user specifications as to the exactness of the match they are seeking); (2) the state in which the school corresponding with each name is located; and (3) a link that can be hovered over to view a small, thumbnail image of the full yearbook page on which the yearbook record appears.
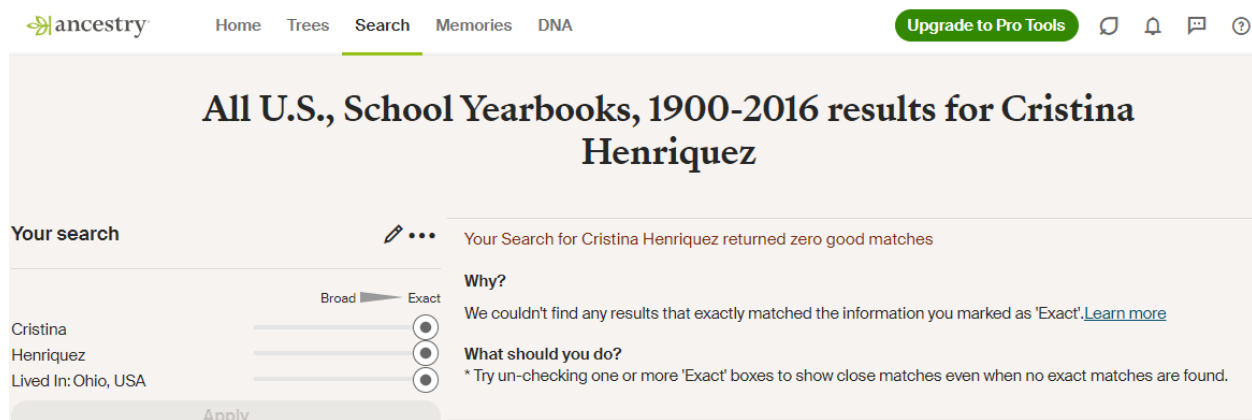
5.　　Below is a true and correct copy of a screenshot of Ancestry's website reflecting a partial list of results from a search for "John Smith," without further qualifiers, that was run in

Ancestry's Yearbook Database without an Ancestry free trial or subscriber account on January 17, 2023, which yielded 55,271 records.

6.   When conducted on March 29, 2024, the same search returned 55,978 records.

7.   Below is a true and correct copy of a screenshot of Ancestry's website following a search run without an Ancestry account on March 29, 2024 for "Cristina Henriquez," in "Ohio, USA," in Ancestry's Yearbook Database, which reflects there were no results for that search.
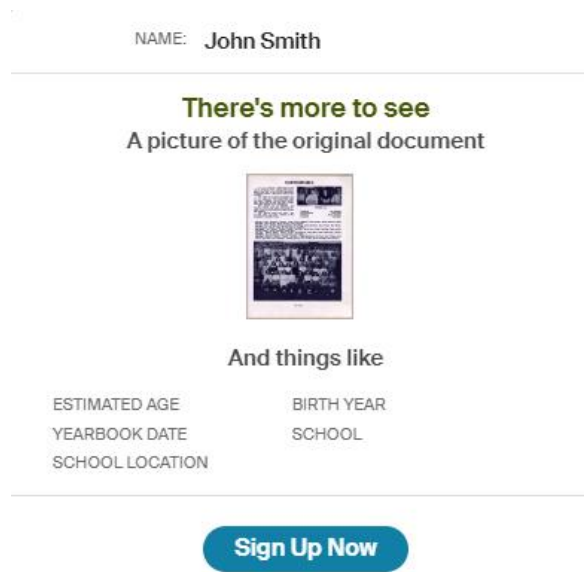

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8.   The lists in the two screenshots above do not exist in static form on Ancestry's site. They are instead generated only in response to a user's search, and, as a result, will differ depending on the user-provided inputs and when the search was conducted.

9.   The information reflected in any results list is stored in different portions of Ancestry's database and is drawn together through application programming interfaces ("APIs") into a "search result" list only if a user has conducted a search that corresponds with a record. There are also various ranking models that affect which results are displayed that change periodically; thus, the same search input could generate different results over time. As a result, any list will differ depending on the user-provided inputs and when the search was run. The same is true of any other search result list on Ancestry's site. For example, a March 29, 2024 search in Ancestry's yearbook database for "Geronimo Alvin Madrid" in Wyoming, USA resulted in a list of two records. On the other hand, a search that same day in Ancestry's yearbook database for "John Wilson" in "Ohio, USA" resulted in a list of 1,612 yearbook records.

10.   Non-subscribers who hover over the "View Record" icon for a record contained in a search results list will be able to see a thumbnail image of the full yearbook page on which the listed record appears and a list of the categories of information that might be available for that record. All thumbnails are images of the full yearbook page for the relevant record. Therefore, their contents vary based on the contents of the yearbook pages themselves, which are unlikely to contain a yearbook page depicting only the person searched. For example, some yearbook pages, and therefore thumbnails, will have large group photographs from which no individual can be discerned. Some will not have any photographs at all. Below is a true and correct copy of a screenshot reflecting the pop-up preview bubble that appeared when hovering over the first entry

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in a list generated in response to a search run without an Ancestry account for "John Smith," without further qualifiers, in Ancestry's Yearbook Database on ancestry.com on January 17, 2023.
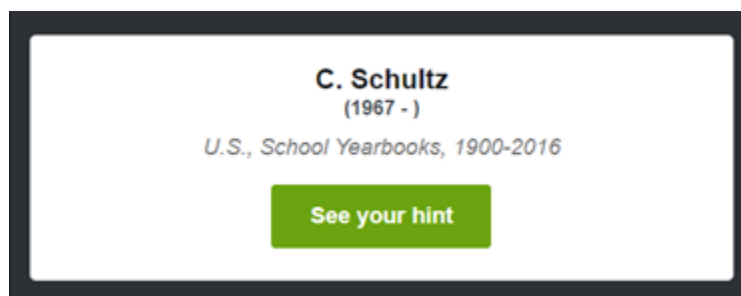

11.   These pop-up bubbles do not exist in static form on Ancestry's website; they are generated only in response to the user's interaction with the site. The information that appears in such a pop-up bubble is stored in different portions of Ancestry's database and is drawn together through various APIs only in response to a user's query on the site. Even if a record is hosted on Ancestry's website, if a non-subscribing user has never searched for that record and scrolled over the "View Record" link, the pop-up bubble reflecting a thumbnail image of that record does not exist. The "pop up" that might be generated if the user "hovers" over the "View Record" link contains only (1) the searched-for (or similar) name, depending on the level of "exactness" specified by the user   and (2) a thumbnail image of the full yearbook page on which the yearbook appears.

12.   Some, but not all, records in Ancestry's Yearbook Database are "hintable" such that they might be included in a "hint" email sent to users who have signed up for an Ancestry

account to inform the user of a record in which he or she might be interested. Records only become "hintable"—and thus will only be included in a "hint" email—if the record is associated with a person a user has added to his or her "family tree." Without such action by an Ancestry subscriber, free trial user, or registrant, the record cannot become a part of a "hint" email. A "hint" email is generated based on a variety of factors (such as the likely familial relationship with the user).

13.   Most yearbook records that are "hintable" have never been included in a "hint" email. "Hint" emails are delivered primarily to those who are already paying subscribers. "Hint" emails do not contain any photographs or images of the yearbook record nor any solicitation to purchase a subscription. "Hint" emails contain only the name the user chose to enter in his or her family tree (which might be no more than an initial), any birth or death year the user may have added in his or her family tree (exactly as entered by the user), the name of the database where the record is housed (*e.g.,* "U.S., School Yearbooks, 1900-2016"), and a link to "See your hint." Below is a true and correct copy of a screenshot reflecting a hint email for a yearbook record in Ancestry's Yearbook Database where an Ancestry account holder provided only the first initial, last name, and year of birth for this person in his or her family tree.

14.   Although "hint" emails are sent based on information users include in their family tree, the information is not perfect and often a hint email sent based on a user's tree will include a record associated with a different person by the same name, suggesting records for people who have no relation to that user.

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15.   Before February 21, 2022, none of plaintiff John Wilson's five yearbook records—(1) John Wilson's 1998 Morgan High School yearbook portrait (record id: 177204880); (2) John Wilson's 1997 Morgan High School yearbook portrait (record id: 175732334); (3) John Wilson's 1995 Morgan High School yearbook portrait (record id: 176212299); (4) a 1996 Morgan High School "Agriculture Education II" group photograph (record id: 1051512726); (5) John Wilson's 1996 Morgan High School yearbook portrait (record id: 187554922)—had ever been the subject of a hint email. Attached as **Exhibit A** is a true and correct copy of W_Ancestry_00002761, which is a screenshot showing that a search performed on June 1, 2023 for any hints for each of the five yearbook records at issue here yielded zero results – *i.e.*, there have been no hints for any of these records since the time these records were uploaded to Ancestry's Yearbook Database.

16.   None of these five yearbook records for John Wilson were ever interacted with in a search results list (such that a "pop up" bubble or prompt to sign up could not have been generated) or accessed in part or in full by any free trial or other non-paying user other than plaintiff's own counsel.
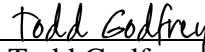
17.   To determine whether a yearbook record was the subject of a hint email to a non-subscriber or has been interacted with (appeared in a pop-up/been hovered over as part of a search results list or accessed in part or in full), Ancestry must conduct a record-by-record and user-by-user inquiry.

18.   There is no uniform method through which any determination could be made with respect to whether a yearbook record was searched or viewed. Rather, this would require an intensive, yearbook-record-by-yearbook-record inquiry for each of the more than 54 million Ohio yearbook records.

I declare under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct.

Executed on the 3 of April 2024 at Lehi, Utah.

DocuSigned by:

Todd Godfrey

Todd Godfrey

Vice President, Global Content
Ancestry.com Operations Inc.

CERTIFICATE OF SERVICE

I certify that on April 8, 2024 a true and correct copy of the foregoing was electronically filed with the Clerk of the United States District Court of the Southern District of Ohio, using the CM/ECF system, which will send notification of such filing to all counsel of record at the email addresses that they have provided to the Court.

DATED April 8, 2024.

/s/ Jennifer A. L. Battle

Jennifer A. L. Battle

EXHIBIT A

Database: ancestry   Schema: p   Username: christopher.john

```
1   SELECT *
2   FROM s.pii_prioritizedhints
3   WHERE dbid = 1265
4       AND recordid IN (177204880,175732334,176212299,1051512726,187554922)
```

[6/1/2023, 9:07:45 AM] Script executed - No Errors [Time: 13s]

SELECT *FROM s.pii_priorit...

0 record(s) [Exec: 13s / Fetch: 0ms] Sum:

prospectid	ucdmid	dbid	datecreated	hintid	lcid	personabirthdate	personadeathdate	personagivenname	personaid	personasurname	score

Grid   Messages